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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/553,457	10/17/2005	Thomas Bohm	327_106	6979
20874	7590	09/23/2008	EXAMINER	
MARJAMA MULDOON BLASIAK & SULLIVAN LLP			KASTURE, DNYANESH G	
250 SOUTH CLINTON STREET			ART UNIT	PAPER NUMBER
SUITE 300			3746	
SYRACUSE, NY 13202			MAIL DATE	DELIVERY MODE
			09/23/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>		Application No. 10/553,457	Applicant(s) BOHM ET AL.
		Examiner DNYANESH KASTURE	Art Unit 3746
<p><b>– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –</b></p> <p>THE REPLY FILED <u>29 August 2008</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.</p> <p>1. <input type="checkbox"/> The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:</p> <p>a) <input type="checkbox"/> The period for reply expires _____ months from the mailing date of the final rejection.</p> <p>b) <input type="checkbox"/> The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.</p> <p>Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).</p> <p>Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</p> <p><b>NOTICE OF APPEAL</b></p> <p>2. <input type="checkbox"/> The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).</p> <p><b>AMENDMENTS</b></p> <p>3. <input type="checkbox"/> The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because</p> <p>(a) <input type="checkbox"/> They raise new issues that would require further consideration and/or search (see NOTE below);</p> <p>(b) <input type="checkbox"/> They raise the issue of new matter (see NOTE below);</p> <p>(c) <input type="checkbox"/> They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or</p> <p>(d) <input type="checkbox"/> They present additional claims without canceling a corresponding number of finally rejected claims.</p> <p>NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).</p> <p>4. <input type="checkbox"/> The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).</p> <p>5. <input type="checkbox"/> Applicant's reply has overcome the following rejection(s): _____.</p> <p>6. <input type="checkbox"/> Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).</p> <p>7. <input type="checkbox"/> For purposes of appeal, the proposed amendment(s): a) <input type="checkbox"/> will not be entered, or b) <input type="checkbox"/> will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended. The status of the claim(s) is (or will be) as follows: Claim(s) allowed: _____. Claim(s) objected to: _____. Claim(s) rejected: _____. Claim(s) withdrawn from consideration: _____.</p> <p><b>AFFIDAVIT OR OTHER EVIDENCE</b></p> <p>8. <input type="checkbox"/> The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).</p> <p>9. <input type="checkbox"/> The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fail to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).</p> <p>10. <input type="checkbox"/> The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.</p> <p><b>REQUEST FOR RECONSIDERATION/OTHER</b></p> <p>11. <input checked="" type="checkbox"/> The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.</p> <p>12. <input type="checkbox"/> Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____</p> <p>13. <input type="checkbox"/> Other: _____.</p> <p>/Devon C Kramer/ Supervisory Patent Examiner, Art Unit 3746</p>			

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments have been carefully considered but are not persuasive for reasons discussed below. First of all, the examiner confirms that the reference to two different elements as disclosing the same claim limitation as pointed out in applicant's response IS a typographical error. The correct bullet item in paragraph 4, page 4 of examiner's last office action should read: "a 'second' valve (8) provided between the pressure gage and the primary pump". The examiner will therefore address applicant's argument with reference to this corrected bullet item. Applicant has argued that the Grosse Bley and Mugele combination does not disclose a second valve located between the exit side of the first high vacuum pump and the primary pump that is controlled in response to the pressure at the inlet of the leak detector. In response, the examiner asserts that with respect to three elements "A", "C" and "E", when element "C" is BETWEEN element "A" and element "E" it does not PREVENT other elements such as "B" and "D" to be situated between element "A" and element "E". So for an arrangement "A" followed by "B" followed by "C" followed by "D" followed by "E" in that order, element "C" would still be BETWEEN element "A" and element "E". The valve (8) of Grosse Bley et al is in a fluidic path that originates at the primary pump and ends in the sample chamber with the first high vacuum pump in between (from the combination with Mugele et al). This fluid path would include valves 14 or 19 after valve 8 is opened in response to forevacuum pressure. Therefore the valve (8) along with pump (6) and valves (14/19) are all BETWEEN the exit side of the first vacuum pump and the primary pump, thus satisfying the claimed limitation. The independent claim does NOT state that the second valve is provided ADJACENT to the primary pump AND ADJACENT to the exit side of the first high vacuum pump - the second valve thereby situated therebetween. The word "between" that is in the claim has to be given its broadest reasonable interpretation. Note that, as stated in the office action, the valve (8) of Grosse Bley et al satisfies the functional limitation of being controlled in response to the pressure at the inlet of the leak detector because Column 3, Lines 35-36 of Grosse Bley et al discloses "As soon as forevacuum pressure has been attained, valve 8 may be opened and general counterflow leak detection may commence." The examiner therefore respectfully disagrees with applicant's arguments and maintains that Grosse Bley et al modified by Mugele et al discloses all the claimed limitations and this application therefore is not in condition for allowance.